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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

SILVIA J SOTO,

Plaintiff,

v.

MARTIN O'MALLEY¹,
Commissioner of Social Security,

Defendant.

Case No. 2:24-cv-01268-CKD

**STIPULATION FOR THE AWARD
AND PAYMENT OF ATTORNEY
FEES AND EXPENSES PURSUANT
TO THE EQUAL ACCESS TO
JUSTICE ACT; ORDER**

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of ONE THOUSAND ONE HUNDRED TWENTY-FIVE AND 25/100 (\$1,125.25) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00) under

¹ Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 28 U.S.C. §1920. This amount represents compensation for all legal services rendered
2 on behalf of Plaintiff by counsel in connection with this civil action, in accordance with
3 28 U.S.C. §§ 1920, 2412(d).

4 Plaintiff was the prevailing party in this matter and Plaintiff is an individual
5 whose net worth does not exceed \$2,000,000 at the time the civil action was filed. The
6 position of the Commissioner was not substantially justified and an award of fees is not
7 unjust.

8 After the Court issues an order for EAJA fees to Plaintiff, the government will
9 consider the matter of Plaintiff's assignment of EAJA fees to Plaintiff's attorney.
10 Under *Astrue v. Ratliff*, 130 S. Ct. 2521, 2528-29 (2010), EAJA fees awarded by this
11 Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program
12 (31 U.S.C. § 3716(c)(3)(B) (2006)). Any EAJA fees should therefore be awarded to
13 Plaintiff and not to Plaintiff's attorney. If, after receiving the Court's EAJA fee order,
14 the Commissioner (1) determines that Plaintiff has assigned his right to EAJA fees to
15 his attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset
16 under the Treasury Offset Program, and (3) agrees to waive the requirements of the
17 Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney.
18 However, if there is a debt owed under the Treasury Offset Program, the Commissioner
19 cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining
20 EAJA fees after offset will be paid by a check or electronic fund transfer (EFT) made
21 out to Plaintiff, but delivered to Plaintiff's attorney.
22

23 This stipulation constitutes a compromise settlement of Plaintiff's request for
24 EAJA attorney fees, and does not constitute an admission of liability on the part of
25 Defendant under the EAJA or otherwise. Payment of the agreed amount shall constitute
26 a complete release from, and bar to, any and all claims that Plaintiff and/or Counsel
27
28

1 including Counsel's firm may have relating to EAJA attorney fees in connection with
2 this action.

3 The parties further agree that the EAJA award is without prejudice to the right of
4 Plaintiff's attorney to seek attorney fees pursuant to Social Security Act § 206(b), 42
5 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. §
6 2412(c)(1) (2006).

7 Respectfully submitted,

8
9 Dated: September 25, 2024

/s/ Jonathan O. Peña

10 JONATHAN O. PEÑA

11 Attorney for Plaintiff

12 Dated: September 25, 2024

PHILLIP A. TALBERT

13 United States Attorney

14 MATHEW W. PILE

15 Associate General Counsel

Office of Program Litigation

16 Social Security Administration

17 By: * Justin Lane Martin

18 Justin Lane Martin

19 Special Assistant U.S. Attorney

Attorneys for Defendant

20 (*Permission to use electronic signature
21 obtained via email on September 25, 2024).

ORDER

The parties' Stipulation for the Award and Payment of Equal Access to Justice Act Fees and Expenses (ECF No. 14) is GRANTED.

IT IS ORDERED that fees and expenses in the amount of ONE THOUSAND ONE HUNDRED TWENTY-FIVE AND 25/100 (\$1,125.25) as authorized by the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), be awarded subject to the terms of the Stipulation.

SO ORDERED.

Dated: 11/5/2024



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE